

JS-6

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Charles P. Kocoras	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	01 C 7733	DATE	3/21/2002
CASE TITLE	FremantleMedia et al vs. Colmar, Ltd		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]


MOTION:

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DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due _____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Ruling held. **ENTER MEMORANDUM OPINION:** We grant Fremantle and RTL's motion (Doc 19-1) to dismiss Colmar's counterclaim. In addition, we award Fremantle and RTL a declaratory judgment that they are not parties to Colmar's agreement with Fremantle NA and permanently enjoin Colmar from including Fremantle and RTL in any arbitration proceedings stemming therefrom.

- (11) ☒ [For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. <input checked="" type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	SCT 	courtroom deputy's initials	U.S. DISTRICT COURT CLERK 02 MAR 21 PM 12:36 Date/time received in central Clerk's Office	number of notices	Document Number 23
				MAR 22 2002 date docketed	
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provision that any dispute arising from it would be subject to arbitration. A dispute arose over Fremantle NA's performance under the agreement, and Colmar initiated an unsuccessful arbitration against Fremantle NA only.

Unsatisfied with the result of the first arbitration, Colmar tried again, this time adding Fremantle and RTL as respondents. In response, Fremantle and RTL filed for a declaratory judgment that they are not parties to and therefore are not bound by the Colmar agreement. In November 2001, we preliminarily enjoined Colmar from including Fremantle and RTL in their arbitration proceeding. Colmar amended its arbitration complaint in December, omitting RTL and Fremantle. However, it reserves the right to add them as parties at a later date if Colmar so desires.

Just before our decision regarding the preliminary injunction, Colmar filed a "motion for declaratory judgment," which, based on its content, we treated as an amended answer and counterclaim for a declaration that Fremantle and RTL are subject to the provisions of the Colmar agreement and thus that they can be included in the pending arbitration. Fremantle and RTL now seek to dismiss the counterclaim pursuant to Fed. R. Civ. Proc. 12(b)(6).

DISCUSSION

The motion scheduled for decision today seeks to dismiss Colmar's counterclaim for failure to state a claim pursuant to Fed. R. Civ. Proc. 12(b)(6). The counterclaim

seeks a declaration that Fremantle and RTL are “liable for the action(s) of their respective subsidiary Fremantle North America.” Initially, we note that determinations of liability for breach of Fremantle NA’s obligations under the Colmar agreement must be taken up at arbitration if anywhere; the only issue for us to decide from Colmar’s perspective is whether Fremantle and RTL must submit to the arbitrator’s scrutiny.

Participation in arbitration cannot be compelled in the absence of agreement to do so. Geneva Securities, Inc., v. Johnson, 138 F.3d 688, 691 (7th Cir. 1998). Fremantle and RTL contend that they were never parties to the agreement and that they cannot be held to the arbitration provision. Colmar agrees that they were not signatories but argues that they are alter egos of Fremantle NA. Colmar insists that by virtue of this relationship, they are bound to the obligations of the agreement. The thrust of Fremantle and RTL’s motion is that Colmar has not alleged that RTL and Fremantle are one and the same with Fremantle NA. We disagree that Colmar has not made allegations that would pass muster under Rule 12(b)(6). However, Colmar has pleaded facts that establish the nonviability of his counterclaim. See, e.g., Bennett v. Schmidt, 153 F.3d 516, 519 (7th Cir. 1998). One of Colmar’s main contentions in support of its position is that RTL and Fremantle can force Fremantle NA to perform the way Colmar believes it should in marketing the film. This is a description of the subordinate status of a subsidiary to a parent, not the equivalence of alter egos. In

addition, the exhibits attached to Colmar's response detail the corporate separateness of Fremantle and RTL from Fremantle NA. Despite Colmar's repeated assertions to the contrary, our complete review of these submissions as well as Colmar's own characterizations convince us that there are no grounds to justify the extraordinary step of piercing the corporate veil in this case. Aubert v. American General Finance, Inc., 137 F.3d 976, 979-80 (7th Cir. 1998); Reboy v. Cozzy Iron & Metal, Inc., 9 F.3d 1303, 1308 (7th Cir. 1993).

The second set of submissions in this case begins with a document, filed by Colmar without a pending motion or briefing schedule, titled "Opposition to Permanent Injunction." Fremantle filed a response to this paper, to which Colmar filed a reply. The content of these submissions is most akin to responses to a motion for summary judgment of Fremantle and RTL's claim for declaratory judgment. No such formal motion has been filed, but the parties' papers, particularly Colmar's, fully develop their respective positions on the relevant issues. We will therefore overlook the unconventional nature of the submissions and address Fremantle and RTL's entitlement to a declaration that they are not bound by the Colmar agreement and therefore need not submit to any arbitration.

Colmar has not named Fremantle or RTL as respondents in its current arbitration; Colmar states that it has no plan to do so. Def.'s Resp. at 2. Arguably, this

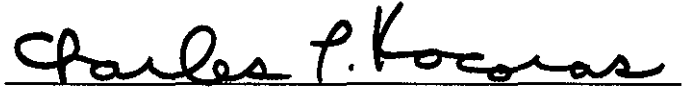
moots the case. However, the arbitration complaint specifically reserves the right to add them at any time. Voluntary cessation of disputed conduct does not moot a controversy if there is a reasonable expectation that the conduct will resume. See Milwaukee Police Ass'n v. Jones, 192 F.3d 742, 747 (7th Cir. 1999); Sefick v. Gardner, 164 F.3d 370, 372 (7th Cir. 1998). For our purposes, then, the case remains alive.

As detailed above, Colmar's submissions have demonstrated that Fremantle and RTL are indeed separate entities from Fremantle NA. As such, they cannot be held to the obligations embodied in the Colmar agreement, to which they are not parties. Declaratory judgment on that issue is therefore appropriate. Their success on the merits of their claim, coupled with the satisfactory showing on the other three requirements for injunctive relief discussed in our prior opinion, also makes the award of a permanent injunction proper. We accordingly enjoin Colmar from adding Fremantle and RTL to the pending arbitration or any other arising out of the Colmar agreement.

CONCLUSION

For the foregoing reasons, we grant Fremantle and RTL's motion to dismiss Colmar's counterclaim. In addition, we award Fremantle and RTL a declaratory judgment that they are not parties to Colmar's agreement with Fremantle NA and

permanently enjoin Colmar from including Fremantle and RTL in any arbitration proceedings stemming therefrom.

A handwritten signature in black ink, reading "Charles P. Kocoras". The signature is written in a cursive style with a horizontal line underneath it.

Charles P. Kocoras
United States District Judge

Dated: March 21, 2002